

April 21, 2022

Seila Mosquero-Bruno, Commissioner
Connecticut Department of Housing
505 Hudson St.
Hartford, CT 06106

Re: Town of Brookfield 8-30g moratorium application

Dear Commissioner Mosquero-Bruno:

I am in agreement with the letter, dated April 8, 2022, from Atty. Timothy S. Hollister in regard to the Town of Brookfield's moratorium application, but I am writing you separately because of my particular concern about what seems to be a recurring pattern – towns saving up and banking what they seem to think of as excess HUE points so that they can use them in a future moratorium application. This entire concept – the banking of “excess” moratorium points – in addition to being contrary to the explicit language of the statute, as Atty. Hollister documents, also inappropriately undermines the purpose of a moratorium.

C.G.S. 8-30g is designed to encourage the development of affordable housing in towns that might otherwise unnecessarily restrict it. The moratorium was adopted in 2000 in recognition that some towns (Trumbull was then the town most cited) had received multiple 8-30g applications, resulting in much new construction in a relatively short amount of time, much of it over the town's objection. The moratorium was explicitly intended to give such towns a break from new development under 8-30g – originally for three years but subsequently increased to four years. The break, however, was never intended to be from all affordable housing development. Instead it was to allow towns that were still below the 10% exemption threshold to promote and encourage the development of affordable housing on their own terms. If they did so, they could earn a second or a third moratorium. It was not for them to rely on pre-moratorium housing to block new housing development for an extended period of time. That is what “holdover” points allow the town to do.

This interpretation of 8-30g is hardly new or unique. You may be interested to know that it is the established interpretation of 8-30g that has been publically posted by the Town of New Canaan's Planning Department. If you go to this website, you will find both a legal opinion and Planning Department FAQs about 8-30g:

https://www.newcanaan.info/news_detail_T8_R311.php. If you click on “Moratorium FAQ's,” you will find the following public guidance from the Planning Department (emphasis added):

Once a municipality attains a moratorium, is the municipality guaranteed another moratorium?

No, in order to qualify for subsequent moratoria, a municipality must demonstrate that since the last moratorium, it has added enough affordable housing units to meeting the HUE point requirement. Affordable dwelling units previously counted towards a moratorium may not be used for subsequent moratoria.

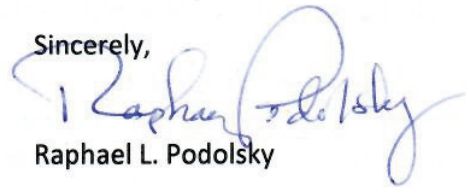
Was New Canaan eligible to apply for a new moratorium on June 5, 2021 when the moratorium expired?

No. At that time, New Canaan did not have enough HUE points to submit an application for a second moratorium. Once the first moratorium became effective on June 5, 2017, additional new affordable dwelling units needed to be constructed to be counted towards a second moratorium.

While this interpretation may not be conclusive, I think it is important because it indicates that Atty. Hollister's and my reading of the statute is not unique.

Thank you very much for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raphael Podolsky", is written over the typed name.

Raphael L. Podolsky